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IBEW-NECA Pension Plan, et al.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA PENSION PLAN, TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA DEFINED CONTRIBUTION TRUST FUND, TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA HEALTH TRUST FUND, TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA SUPPLEMENTAL UNEMPLOYMENT BENEFIT TRUST FUND, TRUSTEES OF THE LOS ANGELES COUNTY ELECTRICAL EDUCATIONAL AND TRAINING TRUST FUND, TRUSTEES OF THE NATIONAL ELECTRICAL BENEFIT FUND, TRUSTEES OF SOUTHERN CALIFORNIA IBEW-NECA LABOR-MANAGEMENT COOPERATION COMMITTEE, TRUSTEES OF THE NATIONAL NECA-IBEW LABOR-MANAGEMENT COOPERATION COMMITTEE TRUST FUND, NATIONAL ELECTRICAL INDUSTRY FUND, LOS ANGELES ELECTRICAL WORKERS CREDIT UNION, and SOUTHERN CALIFORNIA IBEW-NECA ADMINISTRATIVE CORPORATION.

Plaintiffs.

V.

ROBNETT ELECTRIC, INC., a California corporation,

Defendant

CASE NO.: 2:23-cv-4455

COMPLAINT FOR:

- 1. BREACH OF WRITTEN COLLECTIVE BARGAINING AGREEMENT AND RELATED TRUST AGREEMENTS**
 - 2. VIOLATION OF §515 of ERISA**

1 Plaintiffs complain and allege as follows:

2 **JURISDICTION AND VENUE**

3 1. This Court has jurisdiction of this case pursuant to § 502(e)(1) of the
4 Employee Retirement Income Security Act of 1974, as amended (“ERISA”) [29
5 U.S.C. § 1132(e)(1)], which grants the United States District Courts jurisdiction over
6 civil actions brought by a fiduciary pursuant to § 502(a)(3) of ERISA [29 U.S.C. §
7 1132(a)(3)] to redress violations or enforce the terms of ERISA or an employee
8 benefit plan governed by ERISA. Such jurisdiction exists without respect to the
9 amount in controversy or the citizenship of the parties, as provided in § 502(f) of
10 ERISA [29 U.S.C. § 1132(f)].

11 2. This Court also has jurisdiction of this case pursuant to § 301(a) of the
12 Labor Management Relations Act of 1947, as amended (“LMRA”) [29 U.S.C. §
13 185(a)], which grants the United States original jurisdiction over suits for violation of
14 contracts between an employer and a labor organization in an industry affecting
15 commerce, without respect to the amount in controversy and the citizenship of the
16 parties.

17 3. Venue is proper in this Court pursuant to § 502(e)(2) of ERISA [29
18 U.S.C. § 1132(e)(2)], and § 301(a) of the LMRA [29 U.S.C. § 185(a)], in that this is
19 the district in which the Plaintiff Trust Funds are administered, in which the relevant
20 acts took place, and in which moneys are due and payable.

21 4. To the extent this Complaint sets forth any state law claims, this Court
22 has supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1337(a).

23 **PARTIES**

24 5. Plaintiffs, Trustees of the Southern California IBEW-NECA Pension
25 Plan, Trustees of the Southern California IBEW-NECA Defined Contribution Trust
26 Fund, Trustees of the Southern California IBEW-NECA Health Trust Fund, Trustees
27 of the Southern California IBEW-NECA Supplemental Unemployment Benefit Trust
28 Fund, Trustees of the Los Angeles County Electrical Educational and Training Trust

1 Fund, Trustees of the National Electrical Benefit Fund (“NEBF”), Trustees of the
2 Southern California IBEW-NECA Labor-Management Cooperation Committee (“So.
3 Cal. LMCC”), and Trustees of the National NECA-IBEW Labor-Management
4 Cooperation Committee Trust Fund (“National LMCC”) are the Trustees of express
5 trusts (“Trusts”) created pursuant to written Declarations of Trust (“Trust
6 Agreements”). Except for the NEBF and National LMCC, the Trust Agreements are
7 between various chapters of the International Brotherhood of Electrical Workers
8 (“IBEW”), including Local No. 11 (“Local 11”), and various chapters, including the
9 Los Angeles County chapter, of the National Electrical Contractors Association
10 (“NECA”), an employer association in the electrical industry in Southern California.
11 For the NEBF and the National LMCC, the Trust Agreements are between the
12 National Union of IBEW and the National NECA. The Trusts are now, and were at
13 all times material to this action, Labor-Management multiemployer trusts created and
14 maintained pursuant to §302(c)(5) of the LMRA [29 U.S.C. §186(c)(5)], except for
15 the So. Cal. LMCC and the National LMCC, which are Trusts created and maintained
16 pursuant to the Labor-Management Relations Act of 1947, as amended, and the
17 Labor-Management Cooperation Act of 1975. Plaintiffs, as Trustees of the express
18 Trusts (except for the Trustees of the So. Cal. LMCC and the National LMCC), are
19 “fiduciary[ies]” with respect to the Trusts as defined in Section 3(21)(A) of ERISA [29
20 U.S.C. §1002(21)(A)]. The Trusts are administered by the Trustees of the Trusts in
21 Los Angeles County. Plaintiff, Los Angeles Electrical Workers Credit Union, is a
22 state chartered credit union that collects employee authorized vacation payments
23 pursuant to collective bargaining agreements entered into by Local 11 of the IBEW.
24 Plaintiff, National Electrical Industry Fund, is administered by NECA and collects
25 industry advancement funds pursuant to various collective bargaining agreements
26 entered into by various local unions of the IBEW and various chapters of NECA.
27 Plaintiff, Southern California IBEW-NECA Administrative Corporation, collects and
28 administers fringe benefit contributions and related amounts, including working dues

1 owed to Local 11, pursuant to various collective bargaining agreements covering
2 Southern California. Collectively, all Plaintiffs are referred to herein as "Plaintiffs."

3 6. Plaintiffs are informed and believe, and thereon allege, that at all times
4 material herein, Defendant, Robnett Electric, Inc. ("Defendant"), was and is a
5 California corporation with its principal place of business in Los Angeles, California.

6 **BARGAINING AGREEMENTS AND STATUS OF PARTIES**

7 7. Plaintiffs are informed and believe, and thereon allege, that on or about
8 December 6, 1991, Defendant signed a letter of assent wherein it agreed to be bound
9 to a collective bargaining agreement known as the Inside Wiremen's Agreement
10 entered into by the Los Angeles County Chapter of NECA and Local 11 ("Master
11 Agreement").

12 8. Plaintiffs are informed and believe, and thereon allege, that the terms and
13 provisions of the Trust Agreements are incorporated by reference into the Master
14 Agreement, and/or that Defendant is otherwise bound to the terms and provisions of
15 the Trust Agreements.

16 9. At all times material herein, Defendant has been obligated to the terms
17 and provisions of the Master Agreement and Trust Agreements.

18 10. Plaintiffs are informed and believe, and thereon allege, that Defendant is
19 an "employer" as that term is defined in the Master Agreement and/or related Trust
20 Agreements. Plaintiffs are informed and believe, and thereon allege, that Defendant is
21 an "employer" as defined and used in Section 3(5) of ERISA [29 U.S.C. § 1002(5)],
22 and, therefore, Defendant is "obligated to make contributions to a multiemployer
23 plan" within the meaning of Section 515 of ERISA [29 U.S.C. § 1145]. Plaintiffs are
24 informed and believe, and thereon allege, that Defendant is also an "employer"
25 engaged in "commerce" in an "industry affecting commerce," as those terms are
26 defined and used in Sections 501(1) and 501(3) of the LMRA [29 U.S.C. §§ 142(1)
27 and 142(3)], and within the meaning and use of Section 301(a) of the LMRA [29
28 U.S.C. § 185(a)].

FIRST CLAIM FOR RELIEF

Breach of Written Collective Bargaining Agreement and Related Trust Agreements

11. Plaintiffs hereby refer to, and incorporate herein by reference, paragraphs 1 through 10, above.

12. Plaintiffs are informed and believe, and thereon allege, that by the terms and provisions of the Master Agreement and/or related Trust Agreements, and at all times material herein, Defendant agreed, and is and was obligated, to:

12.1 Prepare and submit true, complete and accurate written monthly contribution reports (“Monthly Reports”) to Plaintiffs on or before a date certain of the calendar month following the month in which the contributions and other amounts accrued showing: i) the identities of employees performing work covered by the Master Agreement and/or the Trust Agreements, ii) the number of hours worked by these employees, iii) the rates of pay, iv) character of hours worked (e.g., straight time, over-time, etc.), and v) based upon the hours worked or amounts paid to employees, the proper calculation of the fringe benefit contributions, benefits and/or withholdings attributable to the same employees.

12.2 Pay to Plaintiffs fringe benefit contributions, benefits and/or withholdings on a monthly basis, and at specified rates for each hour worked by applicable employees. These amounts are considered delinquent if not received by Plaintiffs by the fifteenth of the month succeeding the month in which the work was performed. These amounts are due and payable at Plaintiffs' administrative offices in Pasadena, California.

12.3 Permit Plaintiffs and its agents to conduct audits of payroll and related records in order to determine if fringe benefit contributions and other amounts have been properly paid to Plaintiffs pursuant to the Master Agreement and/or the related Trust Agreements.

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1 13. Plaintiffs are informed and believe, and thereon allege, that Defendant
 2 submitted Monthly Reports to Plaintiffs reflecting work performed by Defendant's
 3 employees during the months of February 2023 through April 2023 covered by the
 4 Master Agreement. In the Monthly Reports, Defendant admitted that it owed
 5 Plaintiffs fringe benefit contributions and other amounts totaling at least \$44,976.63.
 6 However, Defendant failed to pay to Plaintiffs any of the amounts due. Failure to pay
 7 this amount to Plaintiffs is a breach of the Master Agreement and Trust Agreements,
 8 and a violation of Section 515 of ERISA [29 U.S.C. § 1145].

9 14. Plaintiffs are informed and believe, and thereon allege, that on an
 10 ongoing basis, Defendant has, and will continue to, fail to pay to Plaintiffs the
 11 required fringe benefit contributions and other amounts owed. The amount of the
 12 additional unpaid contributions and other amounts owed will be established by proof
 13 at the trial herein.

14 15. As of the date of filing this Complaint, Defendant is "delinquent," as that
 15 term is used in the Master Agreement and/or related Trust Agreements.

16 16. Pursuant to the Master Agreement, related Trust Agreements, and/or
 17 §502(g)(2) of ERISA [29 U.S.C. §1132(g)(2)], Defendant is obligated to pay to
 18 Plaintiffs liquidated damages for the detriment caused by the failure of Defendant to
 19 timely pay fringe benefit contributions and other amounts owed to Plaintiffs. Pursuant
 20 to the written Southern California IBEW-NECA Joint Collection Committee
 21 Collection Policy and Procedures ("Joint Collection Policy") promulgated by the
 22 Plaintiffs pursuant to the authority granted to them by the Master Agreement and
 23 Trust Agreements, those liquidated damages are assessed at 1.5% for each 30 days
 24 that the contributions are delinquent up to a maximum of 18%. However, if a lawsuit
 25 is filed to collect the contributions, the Joint Collection Policy provides for liquidated
 26 damages assessed at twenty percent (20%) of the unpaid or late paid contributions.
 27 Plaintiffs are informed and believe, and thereon allege, that there is due and payable
 28 from Defendant to Plaintiffs liquidated damages related to work performed from

1 December 2022 through the present in an amount that will be established by proof at
2 trial herein.

3 17. Plaintiffs are informed and believe, and thereon allege, that Defendant
4 has failed to pay certain additional amounts of liquidated damages in amounts not
5 presently known to Plaintiffs, and these additional amounts will be established by
6 proof at trial herein.

7 18. Pursuant to the Master Agreement, related Trust Agreements, Joint
8 Collection Policy and/or §502(g)(2) of ERISA [29 U.S.C. §1132(g)(2)], Defendant
9 owes Plaintiffs interest accruing at 8% per annum on all unpaid or late paid fringe
10 benefit contributions, and related amounts, from the dates the sums were originally
11 due to Plaintiffs through the date of judgment and post-judgment. Plaintiffs are
12 informed and believe, and thereon allege, that there is due and payable from
13 Defendant to Plaintiffs interest related to work performed from December 2022
14 forward, in an amount that will be established by proof at trial herein.

15 19. By the Master Agreement, Trust Agreements and/or Section 502(g)(2) of
16 ERISA [29 U.S.C. §1132(g)(2)], Defendant is obligated to pay all legal and auditing
17 costs in connection with any delinquency, whether incurred before or after litigation is
18 or was commenced.

19 20. It has been necessary for Plaintiffs to engage legal counsel for the
20 purpose of collecting said contributions and other amounts, and Plaintiffs are entitled
21 to their reasonable attorneys' fees in connection therewith. The exact amount of the
22 legal fees due and payable has not been ascertained at this time. It may also be
23 necessary for Plaintiffs to incur audit costs for the purpose of collecting the amounts
24 owed by Defendant. The amounts due for legal fees and auditing costs shall be
25 established by proof at trial.

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1 21. Pursuant to §502(g)(2) of ERISA [29 U.S.C. §1132(g)(2)], the Court may
2 grant such other legal or equitable relief as the Court deems appropriate. As part of
3 Plaintiffs' judgment, Plaintiffs request the Court to:

4 21.1 Order Defendant, its representatives, agents and associates, to provide a full and complete accounting for, and tracing the use of, all unpaid amounts
5 owed pursuant to the Master Agreement and Trust Agreements, and identify all
6 property, real or personal, tangible or intangible, that are the profits from the unpaid
7 amounts, whether in whole or in part, of the use of any sums owed to the Plaintiffs;

8 21.2 Order Defendant, its representatives, agents and associates, to post and deliver either a good faith deposit, or a performance bond issued in favor of the
9 Plaintiffs, in an amount determined by the Court to be appropriate;

10 21.3 Order the creation of a constructive trust for the full amount
11 determined to be due the Plaintiffs on all applicable property of Defendant, and order
12 the transfer of the applicable property to the Plaintiffs; and

13 21.4 Order Defendant, its representatives, agents and associates, to pay
14 to the Plaintiffs all amounts due the Plaintiffs, including, but not limited to, the unpaid
15 contributions, benefits, withholdings, damages, legal fees, audit fees and other
16 expenses and damages incurred.

17 22. Plaintiffs are also seeking injunctive relief, including but not limited to, a
18 temporary restraining order, preliminary injunction and/or permanent injunction:

19 22.1 Ordering Defendant to submit the required Monthly Reports and
20 remit the appropriate fringe benefit contributions and other amounts owed to the
21 Plaintiffs on an ongoing basis;

22 22.2 Enjoining Defendant from continuing to violate its duties under
23 ERISA (by failing to submit the required Monthly Reports and remit the appropriate
24 fringe benefit contributions and other amounts owed to the Plaintiffs on an ongoing
25 basis);

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22.3 Enjoining Defendant from employing employees covered under the Master Agreement and related Trust Agreements without properly reporting and remitting to the Plaintiffs the amounts owed to the Plaintiffs pursuant to those agreements; and

22.4 Ordering Defendant to permit Plaintiffs' auditor access to the wage and payroll books and records of Defendant in order to permit Plaintiffs to verify the precise amount owed by Defendant to Plaintiffs.

**SECOND CLAIM FOR RELIEF
(VIOLATION OF § 515 OF ERISA)**

23. Plaintiffs hereby refer to, and incorporate herein by reference, paragraphs 1 through 22, inclusive of sub-paragraphs, above.

24. Section 515 of ERISA [29 U.S.C. § 1145], provides “[e]very employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.”

25. Defendant is an “*employer*” as defined and used in § 3(5) of ERISA [29 U.S.C. § 1002(5)], and is “*obligated to make contributions to a multiemployer plan*” within the meaning and use of § 515 of ERISA [29 U.S.C. § 1145].

26. Plaintiffs are informed and believe, and thereon allege, that Defendant violated its statutory mandated obligation to timely pay fringe benefit contributions and other amounts to Plaintiffs. Plaintiffs are informed and believe, and thereon allege, that there is due and payable from Defendant the fringe benefit contributions and other amounts set forth in paragraphs 13 through 14, above.

27. Defendant failed to timely cure its violation, and has since continued to violate its statutory obligations.

28. Pursuant to Section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], in any action by a fiduciary in which the judgment is found in favor of the Plan, the Court

1 shall award the Plan: (i) the unpaid contributions, (ii) interest on the unpaid
2 contributions, (iii) an amount equal to the greater of, (a) interest on the unpaid
3 contributions or (b) liquidated damages provided for under the Plan in an amount not
4 in excess of 20% (or such higher percentage as may be permitted under federal or
5 state law) of the amount determined by the Court to be unpaid contributions, (iv)
6 reasonable attorneys' fees and costs, and (v) such other legal or equitable relief as the
7 Court deems appropriate. For purposes of Section 502(g)(2) of ERISA [29 U.S.C. §
8 1132(g)(2)], interest on unpaid contributions shall be determined by using the rate
9 provided under the Plan or, if none, the rate prescribed under § 6621 of the Internal
10 Revenue Code of 1986, as amended, 26 U.S.C. § 6621. The exact amount of unpaid
11 contributions, benefits, withholdings, damages, reasonable attorneys' fees, court costs,
12 interest, liquidated damages and other expenses allowed by federal statute and owed
13 to Plaintiffs by Defendant has not been ascertained at this time. These amounts shall
14 be established by proof at the time of trial.

15 29. As part of Plaintiffs' judgment, Plaintiffs shall also request the relief set
16 forth in paragraphs 21-22, inclusive of sub-paragraphs, above.

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PRAAYER

1. For unpaid fringe benefit contributions and other amounts due in amounts as proved totaling at least \$44,976.63, plus additional amounts as proved;
2. For liquidated damages in amounts as proved;
3. For interest at the applicable rate(s) on all amounts due from their respective due dates and thereafter post-judgment in amounts as proved;
4. For reasonable attorneys' fees in amounts as proved;
5. For costs of suit incurred herein in amounts as proved;
6. For such additional relief as this Court deems just and proper, including, but not limited to, the following:

6.1. An Order directing Defendant, its representatives, agents and associates, to provide a full and complete accounting for, and tracing the use of, all unpaid amounts owed pursuant to the Master Agreement and Trust Agreements, and identify all property, real or personal, tangible or intangible, that are the profits from the unpaid sums due, whether in whole or in part, of the use of any unpaid amounts owed;

6.2. An Order directing Defendant, its representatives, agents and associates, to post and deliver either a good faith deposit, or a performance bond issued in favor of the Plaintiffs, in an amount determined by the Court to be appropriate;

6.3. An Order for the creation of a constructive trust in favor of the Plaintiffs on all applicable property of Defendant, up to the full amount found due by Defendant to Plaintiffs, and an Order for the transfer of the applicable property to the Plaintiffs; and

6.4. An Order directing Defendant, its representatives, agents and associates, to pay to the Plaintiffs all amounts due the Plaintiffs, including, but not limited to, the unpaid contributions, benefits, withholdings, damages, legal fees, and other expenses and damages incurred.

7. For injunctive relief, including but not limited to a temporary restraining order, preliminary injunction and/or permanent injunction:

7.1. Ordering Defendant to submit the required Monthly Reports and remit the appropriate fringe benefit contributions and other amounts due to the Plaintiffs on an ongoing basis;

7.2. Enjoining Defendant from continuing to violate its duties under ERISA (by failing to submit the required Monthly Reports and remit the appropriate fringe benefit contributions and other amounts due to the Plaintiffs on an ongoing basis); and

7.3 Enjoining Defendant from employing employees covered under the Master Agreement and related Trust Agreements without properly reporting and making the required payments to the Plaintiffs.

Dated: June 7, 2023

Respectfully Submitted,

LAQUER URBAN CLIFFORD & HODGE LLP

By: /s/ *Andrew Quinn Thompson*

Andrew Quinn Thompson, Counsel for Plaintiffs,
Trustees of the Southern California IBEW-NECA
Pension Plan, et al.

WAIVER OF JURY TRIAL

Plaintiffs hereby waive a jury trial in this action.

Dated: June 7, 2023

Respectfully Submitted,

LAQUER URBAN CLIFFORD & HODGE LLP

By: /s/ Andrew Quinn Thompson

Andrew Quinn Thompson, Counsel for Plaintiffs,
Trustees of the Southern California IBEW-NECA
Pension Plan, et al.